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14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF SAN BERNARDINO

16 CHINO BASIN MUNICIPAL WATER
17 DISTRICT,
18
19 Plaintiff,
20
21 v.
22 CITY OF CHINO, et al.,
23
24 Defendants.

Case No. RCV RS 51010

[Assigned for All Purposes to the
Honorable Gilbert G. Ochoa]

**NOTICE OF MOTION AND MOTION FOR
SITE VISIT BY THE COURT; CCP
SECTION 651 AND JUDGMENT
PARAGRAPH 15, MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

[Filed concurrently herewith: Declaration of
Scott S. Slater and [Proposed] Order]

Date: August 4, 2023
Time: 9:00 a.m.
Dept: S24

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on August 4, 2023, at 9:00 a.m., or as soon thereafter as
the matter may be heard, in Department S24 of the above-entitled Court located at 247 West
Third Street, San Bernardino, California 92415, the Chino Basin Watermaster (“Watermaster”)
will and hereby does move the Court to conduct a site visit to view facilities within the Chino
Basin pursuant to the Court’s continuing jurisdiction arising under Paragraph 15 of the 2012

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Restated Judgment and Code of Civil Procedure Section 651.

This motion is based on the memorandum of points and authorities below, a stipulation entered to by parties to the Judgment arrived at through a series of telephone conferences and email correspondence with legal counsel for the parties to the Judgment as “meet and confer” process initiated by Watermaster Counsel and on the declaration of Scott S. Slater served herewith, on the papers and records on file herein, and on such oral and documentary evidence as may be presented at the hearing of this motion.

Dated: July 5, 2023

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

BY: 
SCOTT S. SLATER
BRADLEY J. HERREMA
ATTORNEYS FOR CHINO BASIN
WATERMASTER

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND STATEMENT OF FACTS**

3 **A. Introduction**

4 This matter arises from this Court’s sua sponte expression of interest in conducting a
5 facilities tour during its May 12, 2023 hearing on several matters before the Court. The 1978
6 Judgment and Order (the “Initial Judgment”) in which the Court adjudicated water and storage
7 rights among the parties established the Court’s continuing jurisdiction pursuant to Paragraph 15,
8 enabling the Court, upon proper motion, to make further necessary and appropriate orders. The
9 Initial Judgment, entered on January 30, 1978, was amended and restated in 2012 (the
10 “Judgment”) and establishes a Watermaster with defined responsibilities, including but not
11 limited to the adoption of an Optimum Basin Management Program (“OBMP”).

12 More specifically, on May 12, 2023, following its receipt of Watermaster’s Semi-Annual
13 OBMP Status Report, the Court made reference to a Notice of Tour of Chino Basin Facilities,
14 dated January 19, 1999 and expressed an interest in conducting a similar site visit to and
15 inspection of essential Chino Basin facilities in a manner similar to the Honorable Judge J.
16 Michael Gunn’s noticed visit of February 1, 1999 (“1999 Tour”). Watermaster’s counsel
17 represented to the Court that it would work with the parties to the Judgment to explore an
18 agreement on terms and conditions under which such a visit may be conducted. This Motion and
19 enclosed Stipulation are the product of that effort.

20 Watermaster files this Motion and Stipulation with the acknowledgement that the site visit
21 and associated facilities tour is for the benefit of the Court to familiarize itself with the operations
22 in the Basin and not for the purpose of resolving an evidentiary dispute among the parties. As
23 represented by Watermaster’s counsel, the proposed site visit and facilities tour is being modeled
24 after the 1999 Tour. Watermaster respectfully submits that a site visit to the Chino Basin
25 facilities, be conducted in accordance with the Stipulation, arrived at as described in the
26 declaration of Scott S. Slater and attached to this Motion, should form the basis of the proposed
27 order by the Court under its continuing jurisdiction and, alternatively pursuant to Code of Civil
28 Procedure Section 651.

1 **B. Background**

2 First, as a court-appointed entity that serves at the convenience of the Court,
3 Watermaster’s primary directive is to assist in the administration of the Court’s continuing
4 jurisdiction pursuant to the Judgment. Watermaster is prohibited by the Judgment from owning
5 land and property. However, Watermaster and the parties to the Judgment are involved in the
6 implementation of the Physical Solution as set forth in Article VI of the Judgment. As
7 contemplated by Paragraph 41 of the Judgment, Watermaster developed, formally adopted, and
8 this Court ordered the implementation of the OBMP in June of 2000. The Stipulation
9 acknowledges that there are several facilities that are of general importance to the Physical
10 Solution previously viewed in the 1999 Tour and newer ones that are relevant to implementation
11 of the OBMP. Both groupings of facilities are included in the proposed visit and agreed by the
12 Stipulation.

13 **C. Proposed Procedure for Site Visit of Chino Basin Facilities**

14 Watermaster proposes the Court’s site visit of the Chino Basin facilities to be open,
15 transparent and as seamless as possible. In accordance with the Stipulation, the Stipulation
16 includes provisions to assure that the Court’s site visit reasonably complies with ground rules
17 agreed by the parties to the Judgment. Watermaster’s proposed procedure for the Chino Basin site
18 visit was initially shared with counsel for each of the three Pools for input. (Declaration of Scott
19 S. Slater (“Slater Decl.”), ¶5). After receiving input, but no agreement, Watermaster published a
20 proposal similar to the current Stipulation to all counsel of record and then presented it at the
21 regularly scheduled Watermaster Board meeting on June 20, 2023. (Slater Decl., ¶5). The Board
22 authorized counsel to continue to meet with and consult with stakeholder legal counsel and to file
23 a motion with the Court, no later than July 5, 2023, so that the matter could be heard on August 4,
24 2023 at the scheduled Court hearing. (Slater Decl., ¶6). The Board extended counsel discretion to
25 accommodate comments and concerns in the motion to be filed with the Court and the Stipulation
26 contains responsive modifications. (Slater Decl., ¶6).

27 The final proposal is set forth in the Stipulation for Site and Facilities Visit Protocols (the
28 “Stipulation”) attached hereto. (Slater Decl., ¶11, Exh. A). As of the date of this filing, no party to

1 the Judgment has expressed opposition to the Stipulation and the site visit proceeding. However,
2 the Overlying Non-Agricultural Pool Committee offered comments, some of which were
3 addressed by the current form of the Stipulation, but it Watermaster's understanding that the
4 Overlying Non-Agricultural Pool Committee's position is likely dependent upon review of this
5 Motion. (Slater Decl., ¶¶15-16).

6 The Stipulation proposes seven (7) attendees to be present at the Court's site visit of the
7 Chino Basin facilities. Those attendees would be:

- 8 1) the Honorable Judge Ochoa;
- 9 2) Judge Ochoa's Court Clerk at the Court's discretion;
- 10 3) Peter Kavounas, the Watermaster;
- 11 4) Andy Malone, Watermaster's Technical Representative;
- 12 5) an Appropriate Pool-Designee;
- 13 6) an Overlying (Agricultural) Pool Designee; and
- 14 7) an Overlying (Non-Agricultural) Pool Designee.

15 Watermaster proposes that the site visit take place on a date convenient to the Court,
16 ideally commencing at 8:30 a.m. and ending at 4:00 p.m. This schedule is compact, but we
17 believe capable of being administered within this time frame provided that it is initiated from a
18 location within the Basin. Watermaster is proposing that the initial gathering point be the
19 Watermaster office located at 9641 San Bernardino Road, Rancho Cucamonga, CA 91730.
20 Watermaster has prepared pre-tour explanatory materials, maps and graphs, and descriptions of
21 the facilities and their purposes—culled from previous court-filings. All materials have been
22 distributed to the parties to the Judgment prior to filing of this Motion and are attached hereto.
23 (Slater Decl., ¶¶12-13, Exhs. B & C).

24 The Attendees will be transported in a common vehicle retained by Watermaster that can
25 comfortably seat its passengers. The driver will be provided by Watermaster. The tour route and
26 the timeline is attached to the Stipulation with the Attendees stopping for a 30-minute lunch. The
27 expense of the tour will be borne by Watermaster similar to any other court expense.

28 Although no-seating chart is suggested, during the site visit, Peter Kavounas and Andy

1 Malone would provide a description of the facilities and an explanation of their purpose,
2 consistent with the pre-tour materials, for the benefit of the Court. Watermaster proposes that
3 Peter Kavounas and Andy Malone also provide the primary responses to the Court's questions, if
4 any, so as to prevent interruptions to responses and inadvertent questions or comments relating to
5 substantive issues, policies or the perspectives of the parties to the Judgment.

6 Watermaster proposes that the Pool designees serve primarily in an observation capacity,
7 with the ability to answer the Court's questions related to the facilities, their purpose and
8 operations. This is intended to ensure neutrality of the presentations and provide reporting back to
9 the parties to the Judgment, through the Pools. In addition, Watermaster proposes that the entire
10 site visit be recorded, transcribed and transmitted to the parties to the Judgment within five (5)
11 business days of the conclusion of the tour. Mobile recording equipment will be provided to
12 capture conversations inside and outside the vehicle and the recording will begin with the
13 commencement of the visit and continue uninterrupted until its completion.

14 The proposal is meant to address actual and potential concerns expressed by the parties
15 while affording the Court a meaningful opportunity to achieve its objective of learning more
16 about the Basin and its facilities. The proposal fairly balances the considerations and concerns
17 over ex-parte communications, bias and the desire to assist the Court in its decision-making while
18 being reasonably efficient.

19 **II. LEGAL ARGUMENT**

20 **A. Code of Civil Procedure Section 651 Authorizes a Trial Court to Order a Site**
21 **Visit**

22 Under California Code of Civil Procedure section 651, "[o]n its own motion or on the
23 motion of a party, where the Court finds that such a view would be proper and would aid the trier
24 of fact in its determination of the case, the court may order a view of . . . the Property which is the
25 subject of litigation." (Code Civ. Proc. § 651(a)(1).) Subsection (b) further provides that "[o]n
26 such occasion, the entire court, including the judge, jury, if any, court reporter, if any, and any
27 necessary officers, shall proceed to the place, property, object, demonstration, or experiment to be
28 viewed. At the view, the court may permit testimony of witnesses. The proceedings at the view

1 shall be recorded to the same extent as the proceedings in the courtroom." (Code Civ. Proc.
2 §651(b).)

3 The relevant standard for determining whether the trier of fact can view property or a
4 place is whether such view would be "proper" and "aid the trier of fact." It is within the sound
5 discretion of the judge to view the subject property or place for the purpose of understanding the
6 evidence introduced generally. (*Noble v. Kertz & Sons Feed & Fuel Co.* (1945) 72 Cal.App.2d
7 153, 159; *see also Nunneley v. Edgar Hotel* (1950) 36 Cal.2d 493, 501-02 (stating that an
8 appellate court will not reverse a judgment because of a judge's order pursuant to section 651
9 unless the record clearly shows an abuse of discretion).) While the trial judge's viewing of
10 premises in a real property action constitutes independent evidence of anything that the visual
11 inspection discloses, which the trial judge is entitled to weigh with all other evidence (*See Gibson*
12 *v. Cobb* (1965) 236 Cal.App.2d 226, 234.) However, in this instance, there is no specific fact or
13 facts that the Court is being requested to determine and the risk of prejudice is reduced. The site
14 visit is being conducted for the benefit of the Court and in turn, the parties to the Judgment, by
15 ensuring that the Court has a more fulsome understanding of the Basin, essential facilities and
16 their purpose in the ongoing management activities.

17 It is also our view that the visit could proceed without the need for a Court Reporter,
18 under the terms set forth in the Stipulation given the number of stipulating Parties and the non-
19 objection of non-stipulating parties. As proposed, the Stipulation provides for a fully transcribed
20 recording of the proceeding.

21 **B. The Court's Authority to Conduct the Site Visit is Supported by Paragraph**
22 **15 of the Judgment and Common Practice**

23 Paragraph 15 provides that the "[f]ull jurisdiction, power and authority are retained and
24 reserved to the Court as to all matters contained in the Judgment.." other than as excepted on
25 matters not relevant to the instant case. As such, the continuing jurisdiction of the Court is
26 available, upon application as provided by Watermaster herein, "to make such further or
27 supplemental orders or directions as may be necessary and appropriate for interpretation,
28 enforcement or carrying out this Judgment..." The Court's understanding of the Basin and its

1 essential facilities by a site visit is good practice. (*See e.g. Jordan v. Santa Barbara* (1996) 46
2 Cal.App.4th 1245, 1253.) The Court may order the site visit as outlined in the Stipulation, as
3 necessary and appropriate.

4
5 **C. A Site Visit Would Aid the Court in Understanding the Circumstances**
6 **Surrounding the Chino Basin Facilities**

7 The Chino Basin is among the largest groundwater basins in Southern California and the
8 Court is already aware of its relative importance to the people and economy of the region. Neither
9 photographs and drawings nor verbal descriptions alone fully describe the manner in which the
10 Chino Basin facilities operate. By visiting the Chino Basin facilities, this Court will be able to
11 observe the unique characteristics of the facilities, and receive a transparent description of the
12 facilities and their purpose.

13 As described in the Stipulation, during a site visit of the Chino Basin, the Court would
14 view:

- 15 1) the Basin view location;
- 16 2) the GE Flatiron Plant Remediation;
- 17 3) the CCWD Michaels Water Treatment Plant;
- 18 4) the San Sevaine Basins 1-5; Intex vineyard; MWD Connections;
- 19 5) the Pomona Ion Exchange Plant;
- 20 6) the MVWD ASR well;
- 21 7) the Montclair Basins;
- 22 8) the Ely Basins;
- 23 9) the IEUAs Regional Plant (RP) 5;
- 24 10) the Ayala Park Extensometer;
- 25 11) the Chino Desalter #1;
- 26 12) the Ag Area Drive-Through; and
- 27 13) the Prado Basin Viewpoint.

28 The Court's interest in conducting a site visit of the Chino Basin facilities tracks the logic
outlined in the 1999 Tour. The Chino Basin facilities and operations have changed significantly

1 since then and are integral to the management activities that Watermaster administers and the
2 Court oversees. As such, the visit is in the public interest.

3 **D. A Site Visit Would Not Consume an Undue Amount of Time, Nor Would It**
4 **Unduly Disrupt the Court's Schedule.**

5 When evaluating whether a site visit is appropriate, a trial court will consider whether any
6 practical difficulties would make the requested viewing infeasible. (*People v. Price* (1991) 1 Cal.
7 4th 324, 422). No such obstacles exist here.


8 The disruption of the Court, if any, would be minimal. The Chino Basin facilities are
9 located fairly close to the Court. In fact, according to Google Maps, the courthouse is
10 approximately 21 miles from the Chino Basin facilities and the commencement of the tour.
11 Additionally, under the Stipulation, Judge Ochoa and his clerk (if desired and requested by the
12 Court) would be the only participants from the Court to attend the site inspection, meaning the
13 Court would not need to arrange for the transportation of any jurors or extensive Court personnel.
14 Watermaster anticipates the site visit taking no longer than one day as described in the proposed
15 schedule as an attachment to the Stipulation.

16 **III. CONCLUSION**

17 In light of the foregoing, Watermaster has proposed a process to undertake a tour of
18 facilities essential to management of the Basin. Through a process of taking input from the parties
19 to the Judgment, the Stipulation referenced in this Motion provides a fair and efficient method to
20 undertake the site visit for the benefit of both the Court and the parties to the Judgment.
21 Watermaster respectfully requests that the Court grant this Motion in its entirety and enter an
22 order for a viewing of the subject site pursuant to the Stipulation.

23 Dated: July 5, 2023

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

24
25 BY: 
26 SCOTT S. SLATER
27 BRADLEY J. HERREMA
28 ATTORNEYS FOR CHINO BASIN
WATERMASTER

CHINO BASIN WATERMASTER

Case No. RCVRS 51010

Chino Basin Municipal Water District v. City of Chino, et al.

PROOF OF SERVICE

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On July 5, 2023, I served the following:

1. NOTICE OF MOTION AND MOTION FOR SITE VISIT BY THE COURT; CCP SECTION 651 AND JUDGMENT PARAGRAPH 15, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT

/ X / BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:

See attached service list: Mailing List 1

/ ___ / BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

/ ___ / BY FACSIMILE: I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.

/ X / BY ELECTRONIC MAIL: I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

See attached service list: Master Email Distribution List

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 5, 2023 in Rancho Cucamonga, California.



By: Ruby Favela Quintero
Chino Basin Watermaster

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